IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

WP(C).No. 35415 of 2007(N)

AGAINST THE ORDER IN IA.564/07 IN
OS.44/1999 of ADDL.MUNSIFF COURT, PALAKKAD

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PETITIONER:

K.K.BHASKARAN, S/O. KANDU VAIDYER,
KALATHIL HOUSE, MUTTIKULANGARA, PUTHUPARIYARAM,
PALAKKAD.

BY ADV. SRI.VINOD KUMAR.C

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
DISTRICT COLLECTOR, PALAKKAD.

2. TAHSILDAR,
PALAKKAD.

3. VILLAGE OFFICER,
PUTHUPARIYARAM NO.II VILLAGE, PALAKKAD.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.35415 of 2007

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Dated this the 30th day of November, 2007.

JUDGMENT

This Writ Petition is preferred against the order of the Munsiff, Palakkad in I.A.No.564 of 2007 in O.S.No.44 of 1999. It was an application for remitting the Commissioner's report. The court found no ground and rejected the same. A perusal of the report of the Commissioner would reveal that he has reported that he is unable to identify items 1, 2 and 3 of the plaint schedule property.

2. The suit is one for demarcation of the boundaries and therefore it is absolutely necessary to have a proper plan and report by the Commissioner before court for a correct disposal of the case. There is no point in remitting the plan and report to the same Commissioner since he is unable to identify the property with reference to the materials available. So, I cannot find fault with the court for not remitting the Commissioner's plan and report. But at the same time, I feel that if an application is

filed for setting aside the Commissioner's plan and report, it has to be considered by the court below after hearing the other side and if it finds that it has to be set aside, an experienced Commissioner may be appointed with the assistance of a Taluk Surveyor to demarcate the boundaries. But all these depend upon the materials supplied by the plaintiff to show how the present plan and report of the Commissioner are incorrect.

3. Therefore, I dispose of the Writ Petition with permission to the writ petitioner to move an application for setting aside the Commissioner's plan and report and a direction to the court below to consider it on merits after hearing both sides and thereafter dispose of the matter in accordance with law. Being a 1999 suit, the court may try and dispose of the same as expeditiously as possible.

M.N.Krishnan,
Judge.

ess 30/11